STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 21, 2006
v	No. 257269 Oakland Circuit Court
JAMES ALAN GREER, Defendant-Appellant.	LC No. 03-189702-FH

Before: Murray, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Defendant appeals his bench trial conviction for conspiracy to deliver between 50 and 225 grams of cocaine. The trial court sentenced defendant to 10 to 20 years in prison. We affirm.

Defendant complains that the trial court failed to consider his articulated reasons for departure from the mandatory minimum sentence.

A sentencing court may depart from a minimum term of imprisonment if it finds "substantial and compelling reasons to do so." *People v Izarraras-Placante*, 246 Mich App 490, 497; 633 NW2d 18 (2001). This Court reviews for an abuse of discretion the trial court's determination whether a substantial and compelling reason justifies a sentencing departure. *People v Babcock*, 469 Mich 247, 265; 666 NW2d 231 (2003).[1]

[1] As our Supreme Court further explained in *Babcock*, *supra* at 269:

> At its core, an abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome. See *People v Talley*, 410 Mich 378, 398; 301 NW2d 809 (1981) (LEVIN, J., concurring), quoting *Langnes v Green*, 282 US 531, 541; 51 S Ct 243, 75 L Ed 520 (1931) (" 'The term "discretion" denotes the absence of a hard and fast rule.' "). When the trial court selects one of these principled outcomes, the trial court has not abused its

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"Pursuant to MCL 750.157a(a), a person convicted of conspiracy 'shall be punished by a penalty equal to that which could be imposed if he had been convicted of committing the crime he conspired to commit[.]' " *Izarraras-Placante, supra* at 496 n 2. Here, the trial court sentenced defendant pursuant to the possession with intent to deliver statute in effect at the time of defendant's sentencing, MCL 333.7401(2)(A)(III). The statute provided a punishment of between 10 and 20 years in prison.

Contrary to defendant's argument, the trial court judge recognized that he had discretion to depart from the mandatory minimum sentence. The judge stated at sentencing, "I have to sentence you to ten to twenty years, no jail credit." However, the judge made that statement after he listened to both sides argue whether substantial and compelling reasons for departure existed. Moreover, when he ruled on the motion for resentencing, the trial judge expressly rejected defendant's arguments that certain factors constituted substantial and compelling reasons for departure. We conclude that the trial judge recognized that he had the authority to depart from the mandatory minimum sentence and he only decided that he had to sentence defendant to 10 to 20 years in prison after he rejected the reasons for departure set forth by defendant.

Defendant's argument that the trial court abused its discretion by failing to depart rests on a decision by this Court holding that the March 1, 2003, amendments to MCL 333.7401 of the controlled substances act constituted a substantial and compelling reason to depart below the mandatory minimum sentences imposed by the former version of the act. *People v Michielutti (I)*, 266 Mich App 223, 229; 700 NW2d 418 (2005), rev'd *People v Michielutti (II)*, 474 Mich 889 (2005). After defendant filed his brief on appeal, our Supreme Court reversed this Court's holding in *Michielutti* and held that the amendments to MCL 333.7401 cannot constitute a substantial and compelling reason for departure. *Michielutti (II), supra* at 889. Therefore, we conclude that the trial court did not abuse its discretion by rejecting the argument that the amendments to MCL 333.7401 are a substantial and compelling reason for departing from the mandatory minimum sentence.

Defendant also claims that the prosecutor presented insufficient evidence to convict him of conspiracy to deliver between 50 and 225 grams of cocaine. In reviewing the sufficiency of the evidence, this Court views the evidence de novo, in the light most favorable to the prosecutor, to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). It is for the jury to decide questions of intent which "inherently involve weighing the evidence and assessing the credibility of witnesses . . . ." *People v Cain*, 238 Mich App 95, 119; 605 NW2d 28 (2000).

Establishing a conspiracy requires evidence of specific intent to join with others to accomplish an illegal objective. *Izarras-Placante, supra* at 493. In this case, the prosecutor was required to prove that defendant and another person had the specific intent to join to deliver more

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> discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment. An abuse of discretion occurs, however, when the trial court chooses an outcome falling outside this principled range of outcomes.

than 50 grams but less than 225 grams of cocaine. *Id*. "[K]nowledge of the amount of a controlled substance is an element of a conspiracy to deliver charge." *People v Mass*, 464 Mich 615, 618; 628 NW2d 540 (2001). However, in light of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to infer intent. *People v Fennell*, 260 Mich App 261, 270-271; 677 NW2d 66 (2004).

Here, defendant challenges whether the prosecutor presented sufficient evidence that he intended to join with his son, Christopher, to deliver over 50, but less than 225, grams of cocaine. Defendant denied that he agreed with Christopher to deliver cocaine to Danny McCune and no evidence directly shows that he consented to the cutting of the cocaine in order to make it weigh more before they sold it to McCune. Evidence established, however, that defendant called his drug dealer and purchased 42.45 grams of cocaine and he admitted that he agreed to get the cocaine for Christopher to sell to McCune. At one point, Christopher also testified that he told defendant that McCune wanted two ounces of cocaine, but Christopher only needed an ounce and a half of cocaine because he was going to cut it into two ounces. The evidence also established that defendant sat right next to Christopher while Christopher cut the cocaine into a mixture between 50 and 225 grams. Defendant then drove Christopher to McCune so he could complete the sale. Defendant also profited from the sale because he received some money from Christopher and some cocaine from his drug dealer for his part in the transactions.

Deferring to the trial court's superior position to judge witness credibility, and viewing the evidence in a light most favorable to the prosecution, we conclude that the prosecutor presented sufficient evidence to show that defendant had the specific intent to combine with his son to deliver between 50 and 225 grams of a mixture containing cocaine.

Affirmed.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Henry William Saad